

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION FILE
NO. 4:17-CR-003-01-HLM-WEJ

FRANKLIN LEE CLARK GILMORE.

ORDER

This case is before the Court on the Report and Recommendation on Plea of Guilty issued by United States Magistrate Judge John K. Larkins, III [22].

On February 15, 2017, a federal grand jury sitting in the Northern District of Georgia returned an indictment against Defendant. (Indictment (Docket Entry No. 1).) Count one of the indictment charged that, on or about March 16, 2014, Defendant knowingly received at least one visual depiction of a minor engaging in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2), said depictions having been produced using minors engaging in sexually explicit conduct and shipped and transported

in and affecting interstate and foreign commerce, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). (Id. at 1.) Count two of the indictment charged that, on or about January 31, 2016, Defendant knowingly received at least one visual depiction of a minor engaging in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2), said depictions having been produced using minors engaging in sexually explicit conduct and shipped and transported in and affecting interstate and foreign commerce, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). (Id. at 1-2.) Count three of the indictment charged that, on or about March 2, 2016, Defendant knowingly possessed at least one computer and computer storage device that contained at least one visual depiction of a minor engaged in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2), said depiction having been produced using a minor engaging in sexually explicit conduct, involving at least one prepubescent minor and at least one minor who had not attained twelve years of age, and having been produced using materials that

were shipped and transported in and affecting interstate and foreign commerce, in violation of 18 U.S.C. § 2252(a)(4)(B) and 2252(b)(2). (Id. at 2.) The indictment also contained a forfeiture provision. (Id. at 2-4.)

On June 9, 2017, Defendant filed a Consent to Tender Plea Before U.S. Magistrate Judge. (Consent to Tender Plea (Docket Entry No. 20).) On that same day, Defendant entered a plea of guilty before Judge Larkins to count two of the indictment. (Minute Entry (Docket Entry No. 19); Guilty Plea and Plea Agreement (Docket Entry No. 21).)

On June 9, 2017, Judge Larkins issued his Report and Recommendation. (Report & Recommendation (Docket Entry No. 22).) Judge Larkins' Report and Recommendation states, in relevant part:

The Defendant, Franklin Lee Clark Gilmore ("Defendant"), by consent, has appeared before the undersigned United States Magistrate Judge and has entered a plea of guilty to Count Two of the Indictment. After cautioning and examining the Defendant under

oath concerning each of the subjects mentioned in Rule 11, I have determined that the guilty plea was knowing and voluntary, and that the offense charged is supported by an independent basis in fact establishing each of the essential elements of such offense. I have also determined that the defendant understood and knowingly agreed to the limited waiver of appeal contained in his plea agreement.

It is, therefore, **RECOMMENDED** that the plea of guilty be accepted and that the Defendant be adjudged guilty and have sentence imposed accordingly.

(Id. at 1-2 (emphasis and capitalization in original).)

As of the date of this Order, neither Defendant nor the Government has filed an Objection to the Report and Recommendation. The time period for filing Objections has expired, and the Court therefore finds that this matter is ripe for resolution.

Based on the Court's review of the Report and Recommendation and the record in the case, the Court finds that Defendant's plea of guilty was knowingly and voluntarily made, and that Defendant's plea to Count Two of the indictment was

supported by an independent basis in fact establishing each of the essential elements of that offense. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, the Court **ADOPTS** the Report and Recommendation [22] and makes it the Order of this Court. Defendant's plea of guilty to Count Two of the indictment is hereby accepted, and Defendant is hereby adjudged guilty of said offense.

Defendant's sentencing hearing is scheduled for Friday, August 25, 2017, at 2:00 p.m., in Room 300 of the United States Courthouse, 600 East First Street, Rome, Georgia.

IT IS SO ORDERED, this the 29th day of June, 2017.



SENIOR UNITED STATES DISTRICT JUDGE